

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

KELLY EUGENE RHYNE,

Petitioner,

vs.

RENEE BAKER, Warden, et al.,

Respondents.

Case No. 3:06-cv-0082-LRH-VPC

STIPULATION AND ORDER

(Death Penalty Habeas Corpus Case)

The parties, petitioner Kelly E. Rhyne, and respondents, Warden Renee Baker, and Attorney General Adam Paul Laxalt,<sup>1</sup> through counsel, hereby stipulate and agree as follows:

1) Pursuant to this Court's order filed May 21, 2008, staying the instant proceeding pending exhaustion of state remedies, Docket No. 79, this Court should vacate the stay imposed in that order.

2) Pursuant to the order of the Fourth Judicial District Court of the State of Nevada, entered on July 3, 2014, the judgment of conviction and death sentence which is the subject of Mr. Rhyne's amended petition for writ of habeas corpus pending in this Court, Docket No. 52, has been vacated.

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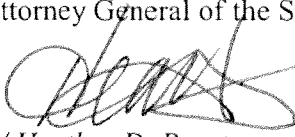
<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d), Attorney General Adam Paul Laxalt is automatically substituted for former Attorney General Catherine Cortez Masto, and Warden Renee Baker is substituted for former Warden E. K. McDaniel as respondents in this matter.

3) In a Memorandum of Plea Agreement, filed in the Fourth Judicial District Court of the State of Nevada on September 30, 2014, Mr. Rhyne and the State of Nevada agreed upon a disposition of the criminal charges, requiring Mr. Rhyne to plead guilty to one count of second degree murder. On December 18, 2014, the Fourth Judicial District Court of the State of Nevada entered a new Judgment and Sentence, based upon Mr. Rhyne's guilty plea, finding Mr. Rhyne guilty of second degree murder, Nev. Rev. Stat. § 200.030(5), and imposing a sentence of life imprisonment with the possibility of parole, plus restitution and fees. A copy of the Judgment and Sentence is attached to this stipulation and order as Exhibit 1. A Notice of Entry of Order was filed on December 24, 2014. The time for appealing that judgment has expired.

4) As the result of the vacation of the judgment previously before this Court, and the entry of a new judgment, this case is now moot, and the Amended Petition, Docket No. 52, should be dismissed with prejudice.

DATED: April 14, 2015

Adam Paul Laxalt  
Attorney General of the State of Nevada

  
/s/ Heather D. Procter  
HEATHER D. PROCTER  
Deputy Attorney General

Attorneys for Respondents

DATED: April 16, 2015

Rene L. Valladares  
Federal Public Defender

  
/s/ Michael Pescetta  
MICHAEL PESSETTA  
Assistant Federal Public Defender

Attorneys for Petitioner

ORDER

Being fully advised in the premises, the Court orders that the stay imposed in its previous order, Docket No. 79, is hereby vacated. The Amended Petition for a Writ of Habeas Corpus by a Person in State Custody, Docket No. 52, is dismissed with prejudice. The Clerk will enter judgment accordingly.

DATED this 21st April, 2015.


  
Hon. Larry R. Hicks  
Senior United States District Judge

EXHIBIT 1

EXHIBIT 1

1 Case No. CR-FD-98-7392

2 Dept. No. 1

FOURTH JUDICIAL DISTRICT COURT  
**FILED IN OPEN COURT**

Date: 12-18-14

Time: 1:55pm

Clerk: [Signature]

6 IN THE FOURTH JUDICIAL DISTRICT COURT

7 STATE OF NEVADA, COUNTY OF ELKO

9 THE STATE OF NEVADA,  
10 Plaintiff,

JUDGMENT AND SENTENCE

11 vs.

12 KELLY EUGENE RHYNE,  
Defendant.

13  
14 On the 30<sup>th</sup> day of September, 2014, the above-named Defendant, Kelly Eugene  
15 Rhyne, [who is further described as follows: Date of Birth: September 25, 1959; (age 55);  
16 Place of Birth: Sacramento, CA] pleaded guilty to the crime described below and as more  
17 fully set forth within the Criminal Information filed herein. Legal counsel present at the  
18 Defendant's arraignment were, GARY TAYLOR, ESQ., Assistant Federal Public Defender,  
19 representing the Defendant, and RICHARD W. SEARS, ESQ., Special Prosecutor for Elko  
County District Attorney, representing the State.

20 DESCRIPTION OF CONVICTION

21 SECOND-DEGREE MURDER, A FELONY AS DEFINED BY N.R.S. 200.030(5)

22 On the 18<sup>th</sup> day of December, 2014, the above-named Defendant appeared before  
23 this Court for the purpose of sentencing and entry of a final judgment of conviction in this

1 matter. This Court, the State and the Defense Counsel previously received a Pre-Sentence  
 2 Report prepared by the Division of Parole and Probation. The above-named Defendant  
 3 was personally present at the sentencing. Legal counsel present at the Defendant's  
 4 sentencing were GARY TAYLOR, ESQ., Assistant Federal Public Defender, representing the  
 5 Defendant, and RICHARD W. SEARS, Esq., Special Prosecutor for Elko County District  
 6 Attorney, representing the State. Also present in court was LISA ELLIOTT, a representative  
 of the Division of Parole and Probation.

7 After hearing from all parties and allowing the Defendant an opportunity to  
 8 personally address the Court, this Court finds that the appropriate judgment in this case is  
 9 and shall be as follows:

#### 10 SENTENCE TERMS

11 For the conviction of SECOND-DEGREE MURDER,  
 12 the Defendant is sentenced to a maximum term  
 of LIFE in the Nevada Department of  
 13 Corrections with a minimum parole eligibility  
 of ONE HUNDRED TWENTY (120) months, with  
 credit for time previously served in the amount  
 of 5891 days.

#### 14 ENTRY OF JUDGMENT

15 **IT IS THEREFORE ADJUDGED** that the Defendant is guilty of said offense as  
 16 charged and convicted, and is sentenced to serve for SECOND-DEGREE MURDER, the  
 Defendant is sentenced to a LIFE in the Nevada Department of Corrections with a minimum  
 17 parole eligibility of ONE HUNDRED TWENTY (120) months, with credit for time previously  
 18 served in the amount of 5891 days.

19 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall pay restitution in the  
 20 amount of \$2,454.99 to Morris Brown, jointly and severally, with James Mendenhall, on  
 behalf of the victim, who paid the victim's burial costs.

21 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall pay a Twenty-Five  
 22 Dollar (\$25.00) administrative assessment fee to the Elko County Clerk, Elko, Nevada.

23 ///

1 IT IS HEREBY FURTHER ORDERED AND THE COURT ADVISES  
2 DEFENDANT that pursuant to NRS 176.063, all administrative assessment fees, all other  
3 fees, and all fines constitute a lien pursuant to NRS 176.275; and that should the Defendant  
4 fail to satisfy said lien(s), collection efforts may be undertaken against the Defendant  
5 pursuant to the laws of this State.

6 DATED this 18<sup>th</sup> day of December, 2014.



7 HON. NORMAN C. ROBISON  
8 DISTRICT COURT JUDGE  
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CERTIFICATE OF HAND DELIVERY

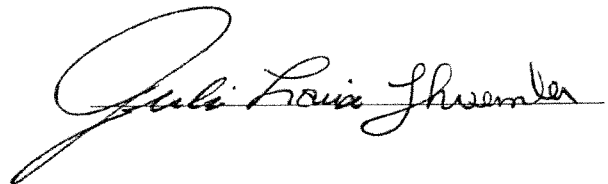
Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 18<sup>th</sup> day of December, 2014, I personally hand delivered a file stamped copy of the foregoing **JUDGMENT AND SENTENCE** addressed to:

Dept. of Parole and Probation  
3920 E. Idaho Street  
Elko, NV 89801  
{ 1 File Stamped Copy}  
[In Open Court]

Gary Taylor  
Asst. Federal Public Defender  
411 E. Bonneville Avenue, Suite 250  
Las Vegas, NV 89101  
{ 1 File Stamped Copy}  
[In Open Court]

Elko County Sheriff's Office  
775 W. Silver Street  
Elko, NV 89801  
{ 1 Certified Copy and 1 File Stamped Copy}  
[Box in Clerk's Office]

Richard W. Sears, Esq.  
Special Prosecutor for  
Elko County District Attorney  
333 Murry  
Ely, NV 89301  
{ 1 File Stamped Copy}  
[In Open Court]





CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 18<sup>th</sup> day of December, 2014, I deposited for mailing in the U.S. mail at Elko, Nevada, postage prepaid, a file stamped copy of the foregoing **JUDGMENT AND SENTENCE** addressed to:

Catherine Cortez Masto  
Nevada Attorney General  
Heroes' Memorial Building  
100 N. Carson Street  
Carson City, NV 89710-4717

Nevada Department of Corrections  
Offender Management Division, Sentence Management  
P.O. Box 7011  
Carson City, NV 89702

